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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/773,856	02/01/2001	Hans Heyde	011881-1890	3580

7590 02/10/2004

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EXAMINER	
LEO, LEONARD R	
ART UNIT	PAPER NUMBER
3753	

DATE MAILED: 02/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/773,856	HEYDE, HANS	
	Examiner	Art Unit	
	Leonard R. Leo	3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-26 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-26 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 3.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2, 4, 6, 8, 11, 14 and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 2, the recitation of "a prior art cooling tunnel" in lines 3-4 is indefinite. It is unclear what effective date constitutes "prior art."

Regarding claim 19, the recitation of "prior art cooling tunnels" in line 2 is indefinite. It is unclear what effective date constitutes "prior art."

Regarding claim 20, the recitation of "a prior art cooling tunnel" in lines 3-4 is indefinite. It is unclear what effective date constitutes "prior art."

Regarding claim 21, the recitation of "a prior art cooling tunnel" in line 4 is indefinite. It is unclear what effective date constitutes "prior art."

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 7-8 and 16-21 as understood are rejected under 35 U.S.C. 102(b) as being anticipated by Sakai. The recitation of "for articles of candy" is considered to be a statement of

intended use, even if claimed, does not merit patentable weight unless the body of the claim refers back to, is defined by, or otherwise draws life and breadth from such intended use. *Ex parte Masham*, 2 USPQ2d 1647 (1987). The device of Sakai is read as a "prior art cooling tunnel."

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 3-6, 9 and 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakai in view of Mills.

Sakai discloses all the claimed limitations except a plurality of distance elements.

Mills discloses a cooling tunnel comprising a conveyor belt 7; upper cooling units 8, 9 and bottom cooling unit 10; and unlabelled distance elements (Figures 3-4) for the purpose of supporting the cooling unit.

Since Sakai and Mills are both from the same field of endeavor and/or analogous art, the purpose disclosed by Mills would have been recognized in the pertinent art of Sakai.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Sakai distance elements for the purpose of supporting the cooling unit as recognized by Mills.

Claims 10-11, 13-14 and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakai in view of Protze et al.

The device of Sakai lacks the channel being a return conduit of the upper cooling unit.

Protze et al discloses a cooling tunnel comprising a conveyor belt 8; and upper cooling unit 1 and bottom cooling unit 10 disposed in channel 9 acting as a return conduit of the upper cooling unit (Figures 1-2) for the purpose of using the bottom cooling unit as the primary cooling source.

Since Sakai and Protze et al are both from the same field of endeavor and/or analogous art, the purpose disclosed by Protze et al would have been recognized in the pertinent art of Sakai.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Sakai the channel acting as a return conduit of the upper cooling unit for the purpose of using the bottom cooling unit as the primary cooling source as recognized by Protze et al.

Claims 12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakai in view of Mills as applied to claims 3-6 and 9 above, and further in view of Protze et al as applied to claims 10-11 and 13-14 above.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry of a general nature, relating to the status of this application or clerical nature (i.e. missing or incomplete references, missing or incomplete Office actions or forms) should be directed to the Technology Center 3700 Customer Service whose telephone number is (703) 306-

5648. Status of the application may also be obtained from the Internet: http://pair.uspto.gov/cgi-bin/final/home.pl

Any inquiry concerning this Office action should be directed to Leonard R. Leo whose telephone number is (703) 308-2611.

LEONARD R. LEO
PRIMARY EXAMINER
ART UNIT 3753

February 9, 2004